



DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Exemption for Exclusive Area Agreements at Certain Airports

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) has statutory authority to grant an exemption from a regulation if TSA determines the exemption is in the public interest. TSA is granting an exemption from an aviation security regulation to permit eligible airport operators to enter into Exclusive Area Agreements (EAA) with Amazon Air, subject to requirements set forth in the Exemption. Also, TSA is rescinding an exemption issued on July 26, 2021, that permitted three airports to enter into EAAs with Amazon Air, as they are now covered by this exemption.

DATES: This Exemption becomes effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and remain in effect until modified or rescinded by TSA through a notice published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Eric Byczynski, Airport Security Programs, Aviation Division, Policy, Plans, and Engagement; eric.byczynski@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Purpose

TSA's regulations provide that airport operators may enter into EAAs only with aircraft operators or foreign air carriers that have a security program under 49 CFR part 1544 or 1546, subject to TSA approval of an amendment to each airport operator's airport security program (ASP). *See* 49 CFR 1542.111. Amazon Air is not an aircraft operator or foreign air carrier, but conducts significant operations at airports on behalf of

aircraft operators. In July 2021,¹ TSA determined it was in the public interest to grant an exemption to section 1542.111 to three airports to permit them to enter into EAAs with Amazon Air. That exemption applied to Cincinnati/Northern Kentucky International Airport (CVG), Baltimore/Washington International Thurgood Marshall Airport (BWI), and Chicago Rockford International Airport (RFD). TSA determined that the public interest was served because the EAAs would create operational and economic efficiencies for the airport operators and Amazon Air, to the economic benefit of the public and without detriment to security. The exemption permitted the airports to leverage significant private sector technologies with respect to access control and monitoring systems that enhance security and minimize insider threat. The exemption also facilitated the rapid hiring of significant numbers of new personnel to support Amazon Air's expanded presence at these locations, aiding the economy in the surrounding areas. Finally, under the exemption, TSA exercises direct regulatory oversight of Amazon Air concerning the security functions they perform under the EAAs.

As discussed below, TSA has determined that the Exemption should be issued for all airport operators that have an ASP as set forth in 49 CFR 1542.103(a)-(b), subject to TSA approval and the ability of the airport operators and Amazon Air to satisfy the requirements set forth in this Exemption.² Furthermore, this Notice rescinds the previous Exemption TSA published in 2021.

Background

Airport Security

TSA administers a comprehensive regulatory program to govern the security of aviation, including standards for domestic airport operators, domestic aircraft operators, and foreign air carriers. The security requirements for domestic airport operators are

¹ See 86 FR 40072, Exemption for Exclusive Area Agreements at Certain Airports (July 26, 2021).

² Note that TSA will consider permitting other entities that are similarly situated to Amazon Air to enter into EAAs with airport operators.

codified at 49 CFR part 1542 and include minimum standards for access control procedures, identification (ID) media, criminal history record checks (CHRCs) of airport workers, law enforcement support, training, contingency plans, TSA inspection authority, and incident management. These regulations require airport operators to conduct specified security measures in the secured area,³ air operations area (AOA), and security identification display area (SIDA) of the airport. Part 1542 requires airports to develop and follow TSA-approved ASPs⁴ that establish security procedures specific to each airport, and Security Directives, which apply to all airports.

TSA recognizes that, in certain circumstances, these security measures may be performed more effectively or efficiently by another TSA-regulated party such as an aircraft operator or foreign air carrier, operating on the airport. Therefore, under 49 CFR 1542.111, TSA may approve an amendment to an airport's ASP that permits the airport operator to execute a legally binding EAA with an aircraft operator⁵ or foreign air carrier.⁶ Under the EAA, the aircraft operator or foreign air carrier assumes responsibility from the airport operator for specified ASP security measures in all or specified portions of the secured area, AOA, or SIDA.⁷ TSA requires the EAA to be in writing, and signed by the airport operator and the aircraft operator or foreign air carrier.⁸ TSA also prescribes in detail the required contents of the EAA, including a description of the measures that become the responsibility of the aircraft operator or foreign air carrier.⁹

EAAAs are an established part of TSA's regulatory structure for airport operators, and have been commonly used since 1978.¹⁰ Currently, there are more than 70 EAAAs in place between aircraft operators or foreign air carriers and domestic airport operators. A

³ See 49 CFR 1540.5 for definitions of terms used throughout this exemption.

⁴ See 49 CFR 1542.105(a).

⁵ See 49 CFR part 1544.

⁶ See 49 CFR part 1546.

⁷ 49 CFR 1542.111(a).

⁸ 49 CFR 1542.111(b).

⁹ *Id.*

¹⁰ See 43 FR 60792 (Dec. 28, 1978).

typical example for the use of an EAA is where an entire airport terminal is serviced exclusively by one aircraft operator. At these locations, TSA conducts standard compliance inspections, and may issue violations of the security standard set forth in the EAA against the aircraft operator or foreign air carrier that holds the EAA.

An “authorized representative” is a person who performs TSA-required security measures as an agent of a TSA-regulated party. Although the authorized representative may perform the measures, the TSA-regulated party remains responsible for completion, and TSA holds the TSA-regulated party primarily accountable through enforcement action of any violations. TSA may also hold the authorized representative accountable if it causes the regulated party’s violation.¹¹

Entities Subject to the Exemption

This Exemption applies to airport operators with a complete or supporting ASP as set forth in 49 CFR 1542.103(a) and (b), and Amazon Air. Amazon Air is a subsidiary of Amazon.com, Inc., an American multinational technology company based in Seattle, Washington engaged in e-commerce, cloud computing, digital streaming, artificial intelligence, and cargo shipping. Amazon reports that less than 20 percent of Amazon’s cargo is shipped by air. Due in part, however, to the COVID-19 public health crisis and impact on the economy, cargo shipment has increased dramatically, with a corresponding relative increase in the total volume of air cargo. The increases are due, in part, to the COVID pandemic, the public’s heightened reliance on online shopping for basic goods, and the Nation’s need to move supplies quickly. Amazon Air estimates that these trends will not significantly diminish when the COVID pandemic subsides.

Amazon Air maintains operations at various domestic and international airports. Amazon Air owns air cargo aircraft, but does not operate the aircraft itself and is not an aircraft operator for purposes of TSA’s regulations. Amazon Air leases the aircraft to

¹¹ See 49 CFR 1540.105.

certain aircraft operators holding TSA full all-cargo security programs.¹² Amazon Air then acts as an authorized representative for these full all-cargo aircraft operators¹³ at certain airports.

As an authorized representative, Amazon Air performs security functions under TSA's Full All-Cargo Aircraft Operator Standard Security Program on behalf of the aircraft operators, including the responsibility for preventing access to both aircraft and the cargo bound for those aircraft, and providing the Ground Security Coordinator, the individual at the facility responsible for coordinating these security responsibilities. Amazon Air has also assumed security responsibility for performing cargo acceptance and chain of custody; cargo screening, buildup, and consolidation; recordkeeping; cargo training; aircraft searches; screening jump seaters¹⁴ and their property; incident reporting; comparing jump seaters and individuals who have access to aircraft and cargo against watchlists; and participation in table top exercises.

To address the current and anticipated demand, Amazon Air is increasing use of its own employees for company services and operations, rather than contracting out for services. Thus, Amazon Air will quickly hire new employees as it expands its operations at regulated airports. Hiring surges can occur at all airports throughout the year due to seasonal changes, construction, or other matters. Most airports can plan ahead for these surges to ensure sufficient staffing in the airport badging offices to begin the vetting process and issue ID media to new employees. However, when a new or existing employer has a significant, sudden increase in employees, all airport vendors can be adversely affected by the strain this places on the airport badging system. It takes significant time to collect the biometric and biographic information needed to initiate

¹² See 49 CFR 1544.101(h) for scope of a full all-cargo security program.

¹³ These full all-cargo aircraft operators include Atlas Air, Air Transport International, ABX, Inc., and Sun Country Airlines.

¹⁴ The term 'jump seater' refers to an off duty commercial pilot who is permitted to travel by using the jumpseat in the cockpit of a commercial aircraft operator.

CHRCs and security threat assessments (STAs), adjudicate CHRCs, and issue the ID media.

Amazon Air has represented to TSA that it has the capability and capacity to assume security responsibilities at other locations in addition to CVG, BWI, and RFI, including ensuring physical control of access points; adjudicating CHRCs for disqualifying offenses and submitting STAs for its employees; issuing ID media; and conducting ID media accountability audits. Amazon Air possesses sophisticated access control and monitoring systems that enhance security by significantly restricting access to cargo and aircraft. As a subsidiary of a profitable, private sector leader in technology, Amazon Air benefits from ample resources to purchase advanced equipment as needed, without regard to local government budget restrictions that many airports face. This factor provides a level of assurance that the security capability will remain consistent and substantial. Amazon Air's independent economic stability also provides a level of assurance that it will be able to quickly obtain any necessary expertise to carry out all of the EAA functions at additional locations going forward.

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.¹⁵ TSA finds this exemption to be in the public interest for several reasons. First, TSA has evaluated Amazon Air's security apparatus with respect to access control and monitoring, vetting and ID media issuance, and cargo management and movement, and determined it to be modern, strong, and resilient. Second, Amazon Air's significant personnel expansion at airports may strain the resources of airport operator and aircraft operator badging offices, adversely affecting other airport vendors and limiting new hire capability. Amazon Air's ability under an EAA to initiate the employee vetting functions that the airport authorities would

¹⁵ See 49 U.S.C. 114(q).

otherwise be required to conduct will more efficiently manage volume as needed. This factor should reap economic benefits for the surrounding areas in terms of employment, and to other airport vendors who will not experience adverse effects from a sudden increase in airport ID media issuance. Moreover, extending the authorities under an EAA to Amazon Air at additional airport locations is consistent with Executive Order 13725¹⁶ to promote competition and reduce regulatory restrictions where possible. Finally, under an EAA, TSA will have direct oversight of Amazon Air's security activities, rather than indirectly through an aircraft operator, for which Amazon Air is an authorized representative. Given the scale of Amazon Air's commercial activities and physical infrastructure that must be secured at these airports, TSA compliance oversight will be more efficient and effective if conducted directly over Amazon Air.

Therefore, TSA has determined that it is in the public interest to grant eligible airport operators an exemption from the provision in 49 CFR 1542.111 that limits the persons with whom an airport operator may execute an EAA to aircraft operators and foreign air carriers. Under this Exemption and in accordance with the requirements set forth below, eligible airport operators may enter into an EAA with Amazon Air.

First, Amazon Air will assume responsibility for the vetting and identification media requirements that apply to individuals with unescorted access to the SIDA. These requirements include collecting and transmitting biographic and biometric information needed to conduct CHRCs, a check of government watchlists, and an immigration check. Also, Amazon Air will issue airport-approved ID media to the individuals who successfully complete the vetting process.

Second, at least 45 days prior to submitting the EAA/ASP amendment to the TSA Federal Security Director (FSD) at the airport for approval, the airport operator must

¹⁶ *Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy*, April 15, 2016.

notify the FSD and TSA's Assistant Administrator of Policy, Plans, and Engagement in writing, stating its interest in executing an EAA and requesting any documentation the parties must have to move forward with the EAA. Note that this 45-day notice provision is currently required when an airport operator seeks to amend its ASP. This 45-day notice will provide TSA sufficient time to evaluate the necessity and advisability of the EAA at that location.

Third, the airport operator and Amazon Air must first obtain all information from TSA that is necessary to execute the EAA prior to executing it. For instance, the parties must have the most recent EAA template issued by TSA, an approved Alternative Measure on file regarding Amazon-issued ID media, and a temporary technical policy regarding STA submissions.

Exemption

1. This Exemption applies to airport operators regulated under 49 CFR 1542.103(a)-(b).
2. The Exemption takes effect on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].
3. For the duration of this Exemption, the eligible airport operators may apply for an amendment to their airport security program that permits the airport operator to enter into an EAA in accordance with 49 CFR 1542.111 with Amazon Air, notwithstanding that Amazon Air is not a TSA-regulated aircraft operator or foreign air carrier.
4. The airport operator must provide written notice of its intent to seek an EAA and ASP Amendment to the FSD and TSA's Assistant Administrator for Policy, Plans, and Engagement at least 45 days prior to submitting the EAA and ASP amendment.
5. The airport operator may not execute the EAA with Amazon Air until the airport operator and Amazon Air have received all information from TSA that is

necessary to execute the EAA. Each airport operator seeking the EAA must receive an Alternative Measure that permits the airport operator to designate Amazon ID media as airport-approved. TSA may also require additional documentation to be on file as circumstances warrant.

6. The terms of the EAA replace requirements set forth in 49 CFR part 1542 so long as Amazon Air complies with the EAA.

7. The EAA must require Amazon Air to comply with all relevant Security Directives and Emergency Amendments issued by TSA.

8. Amazon Air may begin performing as an EAA-holder on the date on which TSA approves an amendment to the respective airport operator's airport security program implementing each executed EAA.

9. The Exemption will remain in effect while the airport operator's TSA-approved airport security program remains in effect. TSA may direct revisions to the ASP amendment and EAA for security reasons in accordance with 49 CFR 1542.105(c). TSA may rescind the ASP amendment and EAA, and may rescind or modify the Exemption, with regard to one or more of the covered airport operators, at any time.

Dated: January 10, 2023.

David P. Pekoske,

Administrator.

[FR Doc. 2023-00647 Filed: 1/13/2023 8:45 am; Publication Date: 1/17/2023]